



Education and Local Government Interim Committee

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58th Montana Legislature

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RICK LAIBLE
JEFF MANGAN
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COMMITTEE STAFF

CONNIE ERICKSON, Research Analyst
EDDY MCCLURE, Staff Attorney
REBECCA SATTler, Secretary
PAMELA JOEHLER, Fiscal Analyst

LOCAL GOVERNMENT SUBCOMMITTEE MINUTES

October 30, 2003

Rm. 152, State Capitol

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

SUBCOMMITTEE MEMBERS PRESENT

REP. JOAN ANDERSEN
SEN. WILLIAM GLASER
SEN. RICK LAIBLE
SEN. JEFF MANGAN, Chairman

STAFF PRESENT

LEANNE KURTZ, Research Analyst
CONNIE ERICKSON, Research Analyst
EDDY MCCLURE, Staff Attorney
REBECCA SATTler, Secretary

AGENDA & VISITORS

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2
Interested Persons' List, ATTACHMENT #3

COMMITTEE ACTION

- Requested various parties to submit written suggestions for improving the subdivision review process by December 10.
- Adopted Option C in the Study Plan, with the caveat that the Subcommittee will address other issues as the time permits.

CALL TO ORDER AND ROLL CALL

The meeting was called to order by CHAIRMAN MANGAN at 9:05 a.m and attendance was noted (ATTACHMENT #4).

SUBCOMMITTEE ORGANIZATION

Connie Erickson, Staffer for the Education and Local Government Interim Committee (ELGIC), went over the meeting schedule and procedure for reporting to the ELGIC. She urged the Subcommittee to meet for half-days on the regularly scheduled days for the ELGIC to coordinate with the other subcommittees and manage costs. Ms. Erickson listed other local government-related items of interest for the Subcommittee to consider, such as government franchise laws, zoning issues, and impact fees. CHAIRMAN MANGAN stated that the Subcommittee will most likely focus on HJR 37 as drafted and add other topics of interest as time permits.

HJR 37 STUDY OF SUBDIVISION AND PLATTING ACT

Leanne Kurtz explained HJR 37 (EXHIBIT 1) for the Subcommittee, stating that it was sponsored by Rep. Mark Noennig. He had originally sponsored a related bill, HB 370, but requested that it be tabled in Committee after consulting with concerned parties, and decided to sponsor the study instead. She said that the Subdivision and Platting Act has been amended piece-by-piece over the years and needs to be organized. She also explained the other problems with the Act, including terms not defined, terms defined that are not used in the Act, and other policy issues.

SEN. GLASER wanted more information regarding the sponsor's tabling of the bill. Leanne Kurtz explained that HB 370 passed Third Reading in the House, but the sponsor had the bill pulled before it had a hearing in the Senate. SEN. LAIBLE noted that the bill was pulled due to potential unintended consequences, and wondered if that was regarding Stillwater County. Ms. Kurtz affirmed that the Stillwater County planner and the surveyors both had some concerns.

Panel Discussion

Jim Madden, Attorney, Department of Environmental Quality (DEQ), gave a brief summary of the Sanitation in Subdivisions Act and how it contrasts with the jurisdiction of the Subdivision and Platting Act. He explained that Title 76, Chapter 4 provides that the State (DEQ) is the review entity, and not local governments. He said that the Act deals with such items as water supply, sewage, storm drainage, and water disposal. Mr. Madden added that the review DEQ performs has to be in compliance with the Montana Water Quality Act, especially regarding wastewater. He explained that the Platting Act gives local government review over broader aspects, and applies up to 160 acres. The Sanitation Act only applies to up to 20 acres. That gap in coverage creates a question of how to handle parcels between 20 and 160 acres according to DEQ standards. Mr. Madden said that an Attorney General's opinion in 2001 stated that there should be a sanitary review of parcels outside DEQ jurisdiction. Mr. Madden explained that the DEQ review can be delegated to county health departments but the DEQ issues the final approval. The DEQ does not re-review the parcel except when requested by the county or when the DEQ identifies a problem. He added that the county health departments can write rules for the septic permitting system in their county.

Bonnie Lovelace, Bureau Chief, Water Protection Bureau, DEQ, said that subdivision review under the Sanitation in Subdivisions Act covers five areas: 1) water supply; 2) storm water management within the subdivision; 3) solid waste removal; 4) septic wastewater treatment; and 5) a nondegradation review. She distributed and explained three handouts. EXHIBIT 2 is a checklist illustrating the various items required in a complete application, EXHIBIT 3 is a list of the total lots approved by county from FY1994-FY2003, and EXHIBIT 4 shows which counties have been contracted to conduct reviews and the types of reviews they perform. Ms. Lovelace said that not many counties in the state are contracted, being related to the county resources available. She said that the DEQ picks up when a contracted county can't continue performing its reviews.

Ms. Lovelace explained that a task force still continues today that was created in 1997. She stated that the task force has changed every subdivision regulation on the books over the years, including: changed minimum standards for counties (to be consistent with the Water Quality Act), enabled counties to add local standards if they desire, and changed Level II nitrate treatment for water. Ms. Lovelace stated that the task force doesn't have any major changes to make now, but will continue to update the rules as needed. She briefly described the history of the legislation regarding the Acts, and stated that a Legislative Programmatic Audit from 2000 recommended that the counties take over all subdivision review. The counties didn't want that total responsibility, so the recommendation was not followed. She pointed out that two important tasks are to train counties and consultants, and maintain current, applicable rules.

SEN. GLASER asked if the DEQ understands the anger associated with the subdivision permitting process. Ms. Lovelace said that there are two main aspects to the frustration: time and money. She explained that the proposed subdivision has to go through the platting review process and then come to the State for review. If there are any problems, the process starts over. She said the frustrations with money are due to the expense of the system types being required. SEN. GLASER stated that they are dealing with peoples' lives and dreams. People expect to go through the process and be done in 60 days, not 9 months. He doesn't see the need to go through such a long, complicated process for a simple, minor subdivision. SEN. LAIBLE wondered about the average time required for a DEQ review, and how much time should be necessary. Ms. Lovelace explained that it is a dual process with the counties involved with the Platting Act and the State involved with the Sanitation Act. She said that both processes take time, but that they have as smooth a system as they can have with their resources. She went on to explain that much of the delay comes from incomplete applications, but it also depends on the volume of reviewing the DEQ is performing at the time. SEN. LAIBLE inquired about a potential check-off list the counties would go through before sending an application to the State. Ms. Lovelace stated that Exhibit 2 is an attempt to do just that. She said that some counties use the list, and some do not, but DEQ is working with the counties to encourage its use.

REP. ANDERSEN wondered what rule a person would be required to follow if the rules were upgraded mid-process. Mr. Madden stated that they are responsible to follow the rules that were in place when the application was filed. CHAIRMAN MANGAN requested that Mr. Madden and Ms. Lovelace submit a written memo addressing their suggestions or issues they see to make the process run more smoothly.

Sharon Haugen, Lewis and Clark County, stated that the Subdivision and Platting Act is the

framework for the subdivision review process, but further requirements can vary from county to county. She distributed EXHIBIT 5, an outline of the minor and major subdivision review processes for Lewis and Clark County. She pointed out that the major process requires two public hearings and approval by the county commissioners. Ms. Haugen explained that during the public notice period, the County asks for comments from all affected agencies.

Lucy Gangler, Planner, City of Helena, said that the city process is similar to the county process. She explained that the City conducts a preapplication meeting to include all city departments and allow them to voice their concerns or protest. She said that they notify adjacent property owners of public hearings as well, but their proposals don't go to the Planning Board. The City ensures compliance with state law, zoning ordinances, and county regulations.

SEN. LAIBLE had a question with Exhibit 5 regarding the public hearing conducted during the preliminary plat review process for major subdivisions, and the subsequent lawsuit in Ravalli County. Ms. Haugen said that they are reviewing that process. SEN. LAIBLE questioned if there would only be a public hearing before the Planning Board, but Ms. Haugen stated that the Board of County Commissioners likes to hear from the constituents. CHAIRMAN MANGAN wondered what ideas Ms. Haugen would suggest to improve the system, and she replied that she will respond formally in writing. CHAIRMAN MANGAN requested that all parties with input get their written ideas to Ms. Kurtz by December 10.

SEN. LAIBLE expressed appreciation for the feedback from the DEQ, county, and city, stating that he had not understood that the 60-day clock starts when the application is complete, not when it is submitted. He observed that the major concern is regarding the time frames for subdivision permitting, with impact fees being a secondary concern if time and resources permit. SEN. GLASER said that there are many angry citizens and developers, and that the anger problem needs to be resolved. REP. ANDERSEN stated her agreement with focusing on HJR 37, and then assessing other potential topics as time permits.

PUBLIC COMMENT

Jim Kembel, Engineer, Real Estate Agent, explained that, as the lobbyist for the Montana Association of Registered Land Surveyors during the 2003 Session, he was opposed to HB 370 and worked with the sponsor to trade it for HJR 37. He stated that the building code requirement by fire districts is left to the Fire Chief of the district. Mr. Kembel said that this is not a good system, and that written standards are needed. He also mentioned his concerns regarding new road standards that increase cost by 2-3 times, and the wildland interface.

Tim Davis, Montana Smart Growth Coalition (MSGC), stated that Rep. Noennig sponsored HB 370 at MSGC's request. He explained that the bill was designed to clean up the Subdivision Act, but the sponsor later requested to have the chairman table the bill before giving it a hearing in the Senate committee. Mr. Davis encouraged the Subcommittee to stick to process issues such as time frames, and to coordinate the various reviews required. He added that everyone he has spoken with agrees that Option C in the Study Plan is the best option.

Peggy Trenk, Montana Association of Realtors, summarized her written comments (EXHIBIT 6), stating her support for Options C and D. She also urged the Subcommittee to

avoid issues of standards, but instead look at the process of both the Platting Act and the Sanitation Act. She agreed that unintended consequences have occurred, due to the “piecemeal approach”, that could be improved. Ms. Trenk suggested that the preapplication process could be improved, and recommended that the Subcommittee focus on the role of other agencies that are consulted as part of the review process.

Stuart Nash, Montana Association of Registered Land Surveyors (MARLS), distributed a letter from Rick Gustine, Chairman, MARLS (EXHIBIT 7), delineating his topics and options for consideration. Mr. Nash added that remainder parcels should be addressed, “minor subdivision” should be defined, and that “original tract of record” is confusing and should be deleted. He stated that the DEQ only needs a few hours to complete the review, and wondered if there was a way to expedite the 60-day provision. He added that local government review periods are not consistent among counties.

Forrest Sanderson, Director, Planning and Zoning, Flathead County, said that if subdivision law is a local decision, then local governments need to be empowered with standards to be met. If it is not a local decision, a Subdivision Bureau should be created in Helena for the whole state. He added that he likes Option B in the Study Plan because it would leave local control in tact.

Myra Shults, Missoula Attorney, said that she defends Montana counties in cases brought against them, including the Brandborg case in Ravalli County regarding the two public hearings. She suggested that information be required to be submitted up front, so that compliance with both Acts is ensured at the beginning of the process. She stated that Ravalli County is being sued for the third time and that the Subdivision and Platting Act regarding public hearings and information should either be left to local entities to control, or should be micromanaged more universally from the state level. Ms. Shults referred to EXHIBIT 8, a copy of the Subdivision and Platting Act, and stated that if the second option is chosen, subdivision requirements will have to be written for the entire (very diverse) state.

Patrick O’Herren, Planning Director, Ravalli County, stated that he will provide written comments to the Subcommittee as it proceeds.

Ken Allen, Missoula Realtor, Developer, reiterated the need for accountability and efficiency for a process that usually takes 10-12 months to complete. He explained that in Missoula they actually have to hold three meetings, counting the neighborhood council meeting prior to application. He stated that if the public can make a subdivision too expensive, it will prohibit the subdivision from being put in.

Joan Miles, Director, Health Department, Lewis and Clark County, suggested that the Subcommittee extend the study and the interested persons’ list to include more agencies. She agreed with the opportunity to work constructively on the Act now to resolve these issues rather than waiting for the session to arrive. She added that the joint permitting process could be improved.

Byron Roberts, Montana Building Industry Association, urged the Subcommittee to focus on the process and support local level subdivision regulation. He added that the current statutes could be sufficient with some modification.

SEN. LAIBLE wondered if local fire districts are writing regulations above state standards. Mr. Kembel stated that they are requiring options such as sprinklers in a house that involves huge costs. SEN. LAIBLE had heard that the sprinkler requirements could be waived with local fire district contribution, and Mr. Kembel affirmed that they could. SEN. LAIBLE then requested Myra Shults to present her suggestions on how to streamline the process, to which she agreed.

CHAIRMAN MANGAN asked if other state agencies besides the DEQ are involved in subdivision review. Peggy Trenk said that she is unsure, but she has heard about the Department of Transportation (MDT) being involved as well. Mr. Allen added that the MDT is the only other state agency, besides the DNRC, that is involved on a regular basis.

HJR 37 STUDY PLAN

Leanne Kurtz went over the Study Plan (EXHIBIT 9), explaining the options listed on page 6. Option A would make technical changes, but no policy changes. Option B would include A, plus Rep. Noennig's suggestions. Option C would include both A and B, plus a broad look at the Subdivision and Platting Act. Option D is to address Chapters 3 and 4 of Title 76, including both the Sanitation in Subdivisions and the Subdivision and Platting Acts. She also went over the schedule on page 7, stating that the remainder doctrine topic could be addressed in the January meeting, an initial bill draft would be presented in the April meeting, the June meeting would be dedicated to revising the bill draft, and by September 15, the full ELGIC has to make its recommendations.

CHAIRMAN MANGAN asked for the will of the Subcommittee. SEN. LAIBLE explained that Option C is the best choice, given the limits of time and resources. He said that they need to provide a time frame for local governments. REP. ANDERSEN agreed that Option C addresses many of the witnesses' issues. SEN. GLASER stated that the loudest voices aren't always the majority opinion. He said he will put the "anger test" on everything. He added that he is against centralization, given the diversities of the state, but should allow the local governments and citizens to work together. He mentioned that he would like a copy of the Audit Report mentioned by Bonnie Lovelace. SEN. LAIBLE added that the December 10 deadline for the submittal of suggestions to improve the review process would allow the Subcommittee to adjust Option C at the January meeting if necessary. CHAIRMAN MANGAN stated that the Subcommittee is mindful of the need for local control during the process, and not centralizing to create a new bureaucracy.

SEN. LAIBLE ***moved*** to adopt Option C in the Study Plan, with the caveat that the Subcommittee will address other issues as the time permits. REP. ANDERSEN seconded the motion, which passed unanimously by voice vote.

Instructions to Staff

CHAIRMAN MANGAN stated that the Subcommittee will look at impact fees later in the interim. He requested that the staff compile the information submitted by the public, create a list of other agencies possibly involved with HJR 37 issues, and to direct the local agencies to work through state agencies to have their opinions represented (since there are too many local agencies to work with individually).

SEN. LAIBLE wondered about the Brandborg decision that was mentioned earlier in the

meeting. Eddy McClure responded that she is not extremely familiar with the case, but cited the 2003 law enacted stating that if an item is on an agenda, the public has the right to comment. SEN. LAIBLE requested that Ms. McClure work with Myra Shults to outline possible options to end the lawsuits. Ms. McClure added that she would like to look into the fire issues mentioned by Mr. Kembel as well.

CHAIRMAN MANGAN requested that Alec Hansen and Gordon Morris let the Subcommittee know how many governments use the pre-application process. Leanne Kurtz asked the Subcommittee to let her know of any additional items they would like on the agenda for the January meeting, and agreed to provide the Audit Report referred to in the hearing.

ADJOURNMENT

The meeting adjourned at 11:50 p.m. The next meeting is scheduled for Friday, January 9, 2004.

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